

REPORT  
OF THE  
ADVISORY COMMITTEE ON RULES FOR  
CIVIL PROCEDURE

*Appointed by the*  
SUPREME COURT OF THE UNITED STATES

CONTAINING  
PROPOSED RULES OF CIVIL  
PROCEDURE FOR THE DISTRICT  
COURTS OF THE UNITED STATES



APRIL 1987

Rule 62 - to be included  
(e) should be either struck  
or transferred to not a to 12(a)

Rule 24 - to be included - (but of Aug 24  
to be completed) 1937

Rule 57, p. 14 - to be completed.

Rule 64 - Title very much in doubt

169 - to be included

170 - (e) - to be included to be  
completed

Rule 4 - to be included (6)

## FOREWORD

For the purpose of inviting suggestions and criticisms, the following draft of proposed rules of civil procedure for the district courts of the United States has been printed and is being distributed to the members of the profession who have heretofore displayed an interest in the subject.

Under the enabling act the rules which may be adopted by the Supreme Court will not be reported to Congress prior to the beginning of the session in January 1938. Meanwhile criticisms of the draft proposed by the Advisory Committee will be useful. They should be sent in before September 15th, if possible.

COMMUNICATIONS ON THE SUBJECT SHOULD BE ADDRESSED TO THE ADVISORY COMMITTEE ON RULES FOR CIVIL PROCEDURE, SUPREME COURT OF THE UNITED STATES BUILDING, WASHINGTON, D. C.

The profession will understand that the draft herewith printed has not yet been given consideration by the Supreme Court and represents only the recommendations of the Advisory Committee.

ADVISORY COMMITTEE ON RULES FOR  
CIVIL PROCEDURE.

**THE STATUTE AUTHORIZING UNIFORM RULES  
OF CIVIL PROCEDURE FOR THE DISTRICT  
COURTS OF THE UNITED STATES.**

Be it enacted \* \* \* That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

Sec. 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided, however,* That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session. [Act of June 19, 1934, c. 651, §§ 1, 2 (48 Stat. 1064), U. S. C., Title 28, §§ 723b, 723c.]

**ORDERS OF THE SUPREME COURT APPOINTING  
THE ADVISORY COMMITTEE**

**SUPREME COURT OF THE UNITED STATES**

**October Term, 1934**

[June 3, 1935]

It is ordered:

1. Pursuant to Section 2 of the Act of June 19, 1934, c. 651, 48 Stat. 1064, the Court will undertake the preparation of a unified system of general rules for cases in equity and actions at law in the District Courts of the United States and in the Supreme Court of the District of Columbia, so as to secure one form of civil action and procedure for both classes of cases, while maintaining inviolate the right of trial by jury in accordance with the Seventh Amendment of the Constitution of the United States and without altering substantive rights.

2. To assist the Court in this undertaking the Court appoints the following Advisory Committee to serve without compensation:

William D. Mitchell, of New York City, Chairman.

Scott M. Loftin, of Jacksonville, Florida, President of the American Bar Association.

George W. Wickersham, of New York City, President of the American Law Institute.

Wilbur H. Cherry, of Minneapolis, Minnesota, Professor of Law at the University of Minnesota.

Charles E. Clark, of New Haven, Connecticut, Dean of the Law School of Yale University.

Armistead M. Dobie, of University, Virginia, Dean of the Law School of the University of Virginia.

Robert G. Dodge, of Boston, Massachusetts.

George Donworth, of Seattle, Washington.

Joseph G. Gamble, of Des Moines, Iowa.

Monte M. Lemann, of New Orleans, Louisiana.

Edmund M. Morgan, of Cambridge, Massachusetts, Professor of Law at Harvard University.

Warren Olney, Jr., of San Francisco, California.

Edson R. Sunderland, of Ann Arbor, Michigan, Professor of Law at the University of Michigan.

Edgar B. Tolman, of Chicago, Illinois.

Charles E. Clark, of New Haven, Connecticut, is appointed Reporter to the Advisory Committee.

3. It shall be the duty of the Advisory Committee, subject to the instructions of the Court, to prepare and submit to the Court a draft of a unified system of rules as above described.

4. During the recess of the Court the Chief Justice is authorized to fill any vacancy in the Advisory Committee which may occur through failure to accept appointment, resignation, or otherwise.

5. The Advisory Committee shall at all times be directly responsible to the Court. The Committee shall not incur expense or make any financial commitments except upon the approval of the Court as certified by the Chief Justice or upon his order during a recess of the Court.

#### SUPREME COURT OF THE UNITED STATES

October Term, 1935

[February 17, 1936]

#### ORDER

It is ordered by this Court that George Wharton Pepper, of Philadelphia, Pennsylvania, be, and he hereby is, appointed a member of the Advisory Committee appointed June 3, 1935, to assist the Court in the preparation of a unified system of general rules for cases in equity and actions at law in the District Courts of the United States and in the Supreme Court of the District of Columbia, in place of George W. Wickersham, deceased.

REPORT OF THE ADVISORY COMMITTEE

ADVISORY COMMITTEE ON RULES FOR CIVIL  
PROCEDURE

OFFICE OF THE SECRETARY

SUPREME COURT OF THE UNITED STATES BUILDING

WASHINGTON, D. C.

*To The Honorable, The Chief Justice and Associate  
Justices of the Supreme Court of the United  
States:*

The members of the Advisory Committee, appointed by the Court to prepare and submit to the Court a draft of a unified system of rules of civil procedure for the United States district courts, herewith submit their report:

The draft of the forms mentioned in Rule 86 has not been completed but will be finished at an early date.

Some broad questions of policy were discussed in the Foreword to the Preliminary Draft printed and published in May 1936 (pp. viii-xviii). The additional comments which the Committee desire to make will be found in the notes to each rule appended to the draft of rules in this report.

Many changes have been made from the Preliminary Draft published in May 1936 and we recommend that this report be printed and dis-

tributed among the judges of the district courts and circuit courts of appeals, the committees of lawyers, the bar associations, and the individual members of the profession who have aided the Advisory Committee, with the object of obtaining further suggestions from members of the profession during the remainder of this year while the draft is under consideration by the Court.

The Advisory Committee organized and commenced work in June 1935, and since that date there has been hardly a period when either the whole Committee or subcommittees or individual members of the Committee have not been engaged on this work. The task has been laborious but interesting. We hope our draft will furnish material which will aid the Court in effecting real reform in the procedure in the district courts.

The Advisory Committee has been supported by the advice and assistance of committees appointed by the judges in the various judicial districts, of committees of bar associations, and of individual members of the profession. Attorneys in the Department of Justice and in other branches of the government service have given valuable advice on questions relating to government litigation. We doubt if any other effort for reform in judicial procedure has been accompanied by greater interest and cooperation on the part of the legal profession.

All suggestions of committees and individuals were copied and distributed to each member of the Advisory Committee, were carefully digested and then considered at the meetings of the whole Committee.



The rules, other than those on depositions, discovery, and summary judgments, were drafted under the supervision of Charles E. Clark, the Reporter, on whose staff James William Moore, Joseph M. Friedman, and others have rendered valuable service. Edson R. Sunderland supervised the draft on depositions, discovery, and summary judgments.

The Committee has been fortunate in the secretarial staff in its office in the Supreme Court of the United States Building at Washington. The speed and accuracy with which this staff, aided by the Photostat Section of the Department of Justice, has turned out the numerous drafts and revisions have been noteworthy.

Edward H. Hammond, assigned by the Attorney General to the Committee's staff, ably assisted by Leland L. Tolman, has not only aided in organizing the Committee's work but has really performed the full service of a member of the Advisory Committee.

The untiring and highly efficient service of Irene G. LeDane, head of the secretarial force, and her assistants, Lois L. Dennis and Virdelma J. Bass, is gratefully acknowledged.

When rules of civil procedure for the district courts are promulgated by the Court, consideration should be given to the question of whether a standing Advisory Committee, serving without compensation, should be appointed to receive suggestions from time to time from the members of the bench and bar and to aid the Court in drafting amendments which experience may show to be desirable.

Until the Court finishes its consideration of this report, the members of the present Advisory Committee are ready to perform such further service as the Court may require.

Respectfully submitted.

WILLIAM D. MITCHELL,  
*Chairman,*

GEORGE WHARTON PEPPER,  
*Vice-Chairman,*

EDGAR B. TOLMAN, *Secretary,*

CHARLES E. CLARK, *Reporter,*

WILBUR H. CHERRY,

ARMISTEAD M. DOBIE,

ROBERT G. DODGE,

GEORGE DONWORTH,

JOSEPH G. GAMBLE,

MONTÉ M. LEMANN,

SCOTT M. LOFTIN,

EDMUND M. MORGAN,

WARREN OLNEY, Jr.,

EDSON R. SUNDERLAND,

*Advisory Committee on Rules for Civil Procedure.*

APRIL 30, 1937.